Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition of the Verizon Telephone Companies	)	
For Forbearance under 47 U.S.C. §160(c) from	)	WC Docket No. 04-440
Title II and *Computer Inquiry* Rules with	)	
Respect to Their Broadband Services	)	

COMMENTS OF
THE WASHINGTON BUREAU FOR ISP ADVOCACY

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The Washington Bureau for ISP Advocacy ("WBIA"), by its attorneys, hereby submits it Opposition to the December 22, 2004, Petition for Forbearance filed by the Verizon Telephone Companies ("Petition").[1]

STATEMENT OF INTEREST

WBIA is a national, non-profit grassroots coalition of Competitive Specialized Information Solution Providers ("CS-ISPs"),[2] Internet Services Providers ("ISPs"), competitive local exchange carriers ("CLECs"), technology innovators, suppliers, aggregators and consumers

[1] *Petition of the Verizon Telephone Companies for Forbearance under 47 U.S.C. §160(c) from Title II and Computer Inquiry Rules with Respect to Their Broadband Services*, WC Docket No. 04-440 (Dec. 22, 2004).

[2] Certain companies, traditionally referred to exclusively as independent Internet Service Providers ("ISPs"), are identified in WBIA's Comments as Competitive Specialized Information Solution Providers ("CS-ISPs"). ISP is an antiquated term that is no longer adequate to fully describe the broad scope of unique and specialized information, technology, and Internet services and solutions offered by a large and growing number of small businesses. The term, ISP, generally describes "Internet access," which is just one of many services provided and functions performed by these CS-ISPs. Ultimately, however, none of the specialized services and solutions offered by CS-ISPs would be possible without continued access to affordable telecommunications and broadband facilities. Throughout these Comments, ISPs and CS-ISPs are collectively referred to as "CS-ISPs."

who recognize the need for consumer choice, sustaining competition and retaining the first tier of CS-ISP/independent ISP connectivity to the Internet.[3]

WBIA is dedicated to ensuring open and frank dialogue that reflects all interests of our nation's Internet infrastructure, from consumer to supplier.[4] WBIA and its supporters believe that all of the facts and consequences must be considered before de-constructing an industry that has contributed to the growth of small business and entrepreneurship and the unparalleled success of our nation's growth as a recognized global technology leader.

The WBIA has no financial interest in the outcome of these proceedings. The Comments presented are based on a consensus of the best interests of the Internet industry, its members, suppliers, and the broad and diverse range of communities served by CS-ISPs. WBIA is participating in the above-captioned Docket because it views Verizon's Petition for Forbearance ("Petition") as a direct and immediate threat to the survivability of CS-ISPs. WBIA believes that granting the relief sought by Verizon and her sister RBOCs would be the first step towards tearing down the CS-ISP industry, the very industry which gave rise to the Internet, stimulated

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[3] WBIA was founded by Cynthia H. de Lorenzi, Chief Executive Officer of PatriotNet, Inc. and Frank Muto, President of FSM Marketing. PatriotNet and the following CS-ISPs, independent ISPs and representatives of the independent ISP industry support WBIA and formally endorse these Comments: The North Texas Technology Council ("NTTC"), a non-profit, member-based organization that develops programs and services to add value to the north Texas technology community; PatriotNet, Inc. (Patriot Computer Group, Inc.), a woman-owned, privately-held, multi-faceted communications and technology company providing commercial Internet access, hosting services, information technology support and consulting services; ConnectNC, Inc./Internet of the Sandhills, a woman-owned Internet solutions provider; and the following small, independent information solution providers: Branded Access Solutions, Fitch Affordable Telecom and The-I.Net Solutions Group, Northeast Texas Online, Inc., Kinex Networking Solutions, Inc., Northeast Texas Online, Inc., Kinex Networking Solutions, Inc., Elirion, Inc., Evangel.Net, Inc., Leadfoot.com, Inc., MuslimAccess, Skowhegan OnLine, Inc., U.S. Digital Television Inc. (USDTV), Alpha Communications Integration Company, DelmarvaOnline, Atlantech OnLine, Eagle Telecommunications, Inc. and Your-Computer-Guy.com.

[4] WBIA is officially hosting the online headquarters for the Virtual Gigabyte March on Washington, D.C. – www.gigabytemarch.org. This grassroots movement serves to build a groundswell of business and consumer voices expressing their views and demanding that the Commission first consider the consequences to all by its systematic dismantling of the Telecommunications Act of 1996 and eradicating the first tier of our nation's Internet infrastructure.

its widespread deployment, and on whose back this nation's information economy is now solidly based.

WBIA believes that telecom policies do not operate in a vacuum and impact not only the CS-ISP, but consumers, technology innovators, suppliers and legislators. The failure to address the needs of these key participants will derail our nation's economic recovery and affect our ranking among the world's global economic powers.

EXECUTIVE SUMMARY

Verizon's Petition attempts to undermine three decades of pro-competition policy and literally put the CS-ISP/independent ISP industry out of business once and for all. While removal of Title II common carriage and *Computer II* obligations would, indeed, slightly reduce a monopoly's cost of doing business, it would be no more appropriate than permitting the ILECs to ban "foreign attachments" to their telephone lines, as they argued against in the *Carterfone* decision which presaged *Computer II*. The separation of carriage from content, like the separation of network access from the terminals that may be attached to it, optimizes the efficiency and public benefits of the network and is fundamental not only to reasoned and balanced government policy, but also to a truly competitive market and the very foundations of American society - a free and open society. Verizon's Petition must be seen for what it is, a self-serving grab at expanding its dominance over the use of its network, and so viewed, must be dismissed.

Verizon's initiative is predictable. It seeks to *coerce* wildly premature action from the Federal Communications Commission ("Commission") in order to end run the rulemaking

process currently pending in WC Docket No. 02-33.[5] By seeking forbearance, Verizon compels the Commission to act or its request will automatically take effect by law. But the Commission's decision to engage in measured, thoughtful and time-consuming fact-gathering deliberations in WC Docket No. 02-33 does not justify Verizon's coercive action. Verizon's Petition is not based on the public's interest, but on the interests of Verizon alone. Indeed, while WBIA is confident that the public interest and the best interests of this nation's vibrant Internet economy will ultimately require the Commission to decide against the de-regulation of ILEC broadband networks sought in both dockets, at a minimum, the Commission must deny Verizon's instant Petition for the reasons set forth below.

COMMENTS

I. VERIZON SEEKS THE RIGHT TO BE UNREASONABLE AND DISCRIMINATORY.

Verizon's request for forbearance should be understood for what it is – the desire for the government-sanctioned right to be unreasonable and discriminatory. What other conclusion is possible for a Petition that asks to be relieved from the fundamental obligations of common carriage?

Private carriage lacks the fundamental characteristics of common carriage. Operating in a private carriage mode, Verizon would be under no obligation to serve a party, such as an unaffiliated ISP/CS-ISP, making a reasonable request for service. As a "private carrier," Verizon could stonewall such requests by offering onerous and unconscionable rates, terms and conditions.

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[5] *See In the Matter of Promotion of Widespread Deployment of High-Speed Broadband Internet Access Services,* Notice of Proposed Rulemaking, WC Docket No. 02-33 (Rel. Feb. 15, 2002).

While it is a fundamental American right that private property may be employed by its owner according to its discretion, the exercise of that right is circumscribed by competing American values – safety, health, civil order, public need and good. Private property *is* regulated – trucks have weight limits and airplane's maintenance requirements; zoning laws limit the use of private property for everything from sites for rendering plants to the sale of liquor; protest marchers must comply with certain requirements to avoid public mayhem and manufacturing plants must adhere to environmental regulations. Verizon's "private property" is not and should not be made immune to such standards, particularly since much of the property for which Verizon now seeks exclusionary use was built with the aid of government-sanctioned monopoly and a protected rate base.

Verizon should not be allowed to use private carriage to engage in self-directed discrimination by making selective offers to preferred business partners and affiliated interests while stonewalling its "strategic competitors."

II. COMMON CARRIAGE AND *COMPUTER INQUIRY* WORK; THEY DO NOT NEED TO BE FIXED OR FOREBORN, INDEED, THEY SHOULD BE EXTENDED TO OTHER BROADBAND PLATFORMS AND ENFORCED WITH VIGOR.

While imperfect in its enforcement, the existing regulatory system governing CS-ISP access to RBOC networks has a long history of success. WBIA submits that what is not broken need not be fixed. Indeed, the Commission should take note of the history of achievement, technological advancement, and consumer choice given life through Title II and *Computer Inquiry* rules and consider extending and enforcing these requirements on all broadband platforms and other facilities that remain essential to deliver information content to the American consumer, regardless of geographic location or income level.

A. Private Carriage is No Substitute for Title II Common Carrier Regulation

The principles that govern the duty of common carriage are well over a century old. They require dominant firms whose service is imbued with public interest, convenience, and necessity to provide those essential services to all who have a reasonable need for and make a reasonable request for service. These duties should not be compromised because those who request and need such services are now viewed as "competitors," or, more accurately from the incumbent's viewpoint, as interlopers on their private domains. The status of the "customer" in Verizon's eyes is not determinative of the public's interests. It is the Commission's responsibility to protect the public's interests, and these interests, it will be shown, are contrary to Verizon's self-serving interests.

As a common carrier, Verizon is not responsible if a customer misuses its facilities and services. Likewise, as a common carrier, Verizon is not entitled to handicap those who request service based on its view of whether the requesting party has a right to that service if and when exercise of that right is seen as a threat to its own corporate goals. The principles of common carriage make clear that the issue is not about the carrier's interests, but the public's interest.

A public utility is regulated because its services are so important and ubiquitously required that economies of scale either warrant the grant of monopoly status or create the necessity for it. To control such power, government regulation is required to balance the competing interests of public need and right versus corporate goals and private rights. Whether the monopoly is a *natural* monopoly or one that warrants government recognition as a monopoly, the economic effect is the same - the cost of becoming another provider is significantly greater than the incumbent's cost, making competitive entry uneconomical or competitive survival problematic, post market entry.

The private carriage sought by Verizon lacks the fundamental and critically important characteristic of "common" carriage – the separation of carriage and content. The postal service delivers the mail. It does not create the content of what is delivered. Likewise, a communications common carrier does not create the content that is delivered by its facilities and, as importantly, does not use its control of those facilities to censor the content that is to be delivered. Once the protocol requirements of delivery are met, the payload may consist of any protocol, any message. Verizon's proposed exclusionary approach, *i.e.*, sole control over who may use its facilities, creates a chilling effect on the speech and diversity of views that are able to reach the public.

Information service providers are not common carriers; they are providers of information. That information may be a product of their own creation and resources or it may be that of their customers. The critical concern is that the widest diversity of content not be artificially truncated by Verizon's self-serving economic interests. The Commission should not lend its good offices to goals so clearly against the public's interest in receiving news, information and content from the broadest array of sources as possible.

The Commission is also aware that private carriage arrangements can only be effected by negotiated contracts. Contracts of adhesion, by definition, are not negotiated. The Commission is or should be aware that interconnection agreements between small CLECs and ILECs are contracts of adhesion. Such contracts have limited the ability to compete, the ability to offer competitive pricing to end users, to offer innovative services and tailored terms to meet customer need. The same result will occur here in regard to small CS-ISP access to customers. Absent regulatory mandates, Verizon has no incentive to fairly negotiate private contractual arrangements with small, CS-ISPs. If the Petition is granted, Verizon will have the upper-hand

and ability to force unfavorable contractual arrangements onto small CS-ISPs. Such contracts of adhesion are contrary to public policy.

Verizon also claims it needs to be freed from Title II common carrier obligations in order to craft more tailored services on behalf of its CS-ISP customers, to whom it wishes to offer private carriage. This argument is disingenuous, and so blatantly fallacious that it mocks the regulatory expertise of the Commission. Verizon's ability to tailor its offerings is in no way diminished by the presence of competitors in the marketplace. Such competition, if anything, only goads a reluctant monopolist to respond to its customer's demands, something it need not do and has not done when heretofore left unchallenged by such competitive forces.

And lastly, the fundamental concern expressed in Verizon's Petition, which is that Title II regulation increases its cost of doing business, can be addressed by Verizon itself. It does not require Commission action or forbearance. DSL lines are not subject to traditional rate regulation. The services provided by their use are defined by the service providers themselves. Verizon is therefore free to craft as much flexibility as it chooses into its DSL offerings. It is not the flexibility in the service offerings that must be available on a nondiscriminatory or uniform basis; it is the availability of the capacity of the DSL lines themselves. Such availability is always subject to loop qualification and other tests. The truth of the matter is that all Verizon needs to do to resolve the concerns its Petition raises is to redraft its tariffed offerings! Any number of consultants and CS-ISPs would be happy to assist in crafting a service definition and tariff that is both flexible and profitable and at the same time meets the needs of unaffiliated CS-ISPs.

B. *Computer Inquiry* Makes Competition Work

Verizon views the *Computer II* rules as an out-of date nuisance, one that simply increases its cost of doing business. The Commission should not be surprised at Verizon's self-serving view. But *Computer II* is more than a nuisance to monopoly local exchange carriers. It is a barrier to their efforts and intrinsic intent to lessen and then eliminate diversity of choices made possible by effectively competitive markets.

Computer II is a classic example of a well-intentioned regulatory program to permit dominant entities to operate in both competitive and non-competitive markets. The ground rules are simple. To counter the advantages of dominant entities, it was necessary to establish the proverbial level playing field. This goal was to be achieved by separating competitive activities from those in which monopoly powers existed. The separation was made by defining the boundaries between LEC lower-layer (basic) services and LEC upper-layer (enhanced) services and their associated terminal equipment. This produced a clear understanding of what a "telecommunications service" was and what it was not.

This separation is recognized in the Telecommunications Act of 1996 ("the Act" or "1996 Act"). The Act's definition of "telecommunications service" largely aligns with the "basic" services of *Computer II*. Clearly, the authors of the Act did not expect to see *Computer II* boundaries eliminated. Indeed, the distinction was codified. Granting Verizon's requested forbearance, therefore, would require the Commission to ignore the fundamental differences in the nature of the two kinds of service and override clear Congressional intent to keep separate the lower and upper layer services.

When the focus of *Computer II* on enhanced services is considered, it is clear that the rules properly delineated the boundary between regulated and unregulated activities. Given the

development of the industry at that time, it is not surprising that *Computer II* had more impact on terminal equipment than upon the then still-nascent enhanced services area. The history recorded is instructive for today.

After *Carterfone* and through *Computer II*, competition in the terminal equipment sector developed, but only with great difficulty. For example, although corporations that leased PBX systems from "the phone company" now had an alternative, that alternative was an unknown – a "no name" vendor, offering unfamiliar terms of service. This phenomenon alone was seen as a risk, rather than an opportunity by many corporations. As a result, many were afraid to use an interconnect company despite the fact that their prices were lower and their offerings more innovative (as was almost always the case).

Then there was the endemic problem associated with transitioning from a monopoly market to a competitive one. Interconnect companies and their customers had to risk problems that did not arise with the incumbent monopoly's tariffed interconnect equipment. For example, trunk circuit orders related to an interconnect company's equipment had to be placed with the monopoly provider via its special "interconnect" ordering process, a stratagem that regularly resulted in processing competitive suppliers' orders more slowly than those of subscribers using telco-owned equipment (such as PBXs). Moreover, whether such "slow-rolling" existed or not in regard to a particular order, the *perception* of discrimination against interconnect companies was enough to discourage most customers from buying from interconnect vendors. These issues were resolved by *Computer II*'s detariffing terminal equipment *and* by requiring the LECs to deal at arm's-length with their unregulated subsidiaries.

Ironically, going all the way back to the MFJ, it will be recalled that its terms required that the post-divestiture entity that would take over the terminal equipment business would be a

fully separated subsidiary of the divested AT&T, *not* its "Baby Bells," the RBOCs of today. The approach taken in the MFJ was followed in the Commission's *ISDN Decision*. The Commission required the NT1 (Network Terminator) to be treated as untariffed customer premise equipment. This had a profound effect on the development of ISDN. A single line-coding standard, Reference Point U, needed to be defined: In Europe, because the demarcation was the user side of NT1 (Reference Point T), line-coding was an internal matter and thus not subject to standardization. American ISDN gear then largely grew up using the 2-wire "U interface" as the demarcation, rather than the 4-wire "S/T interface" found in most other countries.

During the mid-80s, development of ISDN standards, so-called "teleservices" were part of the Comité Consultatif International Téléphonique et Télégraphique ("CCITT" - today's ITU (International Telecommunications Union)) program of work. These were higher-layer services offered over the ISDN. *Computer II* essentially banned the RBOCs from offering teleservices as *part of* ISDN. Instead, the enhanced services, the "teleservices," were to be provided by third parties. This distinction helped lead to the development of the commercial and consumer Internet, among other things.

It is clear from this hindsight (actually, it was fairly clear at the time) that the RBOCs had *no idea* what enhanced services their subscribers really wanted. They were promoting ISDNs for Centrex telephone sets (a valid, if parochial, application), and for obsolete functions such as integrated voice and data (dumb teletype-style) terminals for logging into local minicomputers and mainframes, similar to the failed PBX terminals of a few years earlier.

But because of *Computer II* requirements, equipment vendors and customers could adapt ISDN for their own needs, such as videoconferencing, bulletin board file transfer, telecommuting (remote LAN access), leased-line backup, and, of course, Internet access. These were not bound

to CCITT-standard "teleservice" descriptions. They were innovations that were made possible by *Computer II*.

To this extent *Computer II* mirrored the common carrier obligation that ILECs, as carriers, would not be allowed to meddle with the payload of their subscribers' calls. Nevertheless, the RBOCs did succeed in effectively killing off the ISDN Basic Rate Interface in the American market. However, they did not succeed in killing off the development of a singular piece of equipment that allowed some competition to prevail in the emerging ISP-access market – the modem. Between the time of *Computer II*'s issuance and the late 1990s, free from the impediments toward innovation that the RBOCs may have imposed, modem capacity increased from 2400 bits per second to 53.3 kilobits per second. This is another example of the principles of common carriage at work. The independent modem manufacturers discovered that the actual behavior of the payload was usually better than the specified behavior. *Computer II*, in that sense, did not create the opportunity for innovation, but it put teeth into the nondiscrimination requirements of common carriage – the necessary underpinning of all innovation in modern enhanced services.

It is recognized that today's ubiquitous Internet grew out of government-funded research networks, ARPAnet and NSFnet, and were not open to public access and use. During the 1980s, an increasing number of institutions and corporations gained access to the Internet backbone, but the Acceptable Use Policy (AUP) limited commercialization. In the early 1990s, the backbone was privatized and the AUP no longer applied, opening the floodgates to a vast number of new providers. An industry structure rapidly developed in which three distinct roles emerged under the "ISP" banner:

- **Backbone** ISPs ("IBSPs") are the long-haul providers, dealing at the wholesale level, purchasing bulk intercity pipes and selling service to large organizations and other ISPs.

Since there was no dominant player, a free-market system of "peering", "transit", and "upstream" interconnection developed.

- **Vertical** ISPs ("IVSPs") include the retail providers, purchasing service from IBSPs and providing vertical services to their customers. Still other IVSPs provide services such as web hosting.
- **Access** ISPs (IASPs) evolved to intermediate between the IVSPs and the local exchange carriers. They provide "rent-a-modem" service, or in occasional cases offer self-provisioned bandwidth via available media.

All of these developments evolved *without* the involvement of the ILECs. Indeed, given their narrow focus of preserving and exploiting their monopolies, the ILECs managed to be among the last in the industry to become aware of the growth of the Internet. Thousands of ISPs (specifically IVSPs) were in business all over the country before the major ILECs had their own offerings.

Thanks to *Computer II*, the ILECs could not discriminate against independent ISPs in the provision of dial-up service. Later, they also had to provide DSL to independent ISPs. It is hard to imagine this industry having developed as it did without the strictest application of the protections afforded by *Computer II* and the principles of reasonableness and nondiscrimination embodied in Title II. Relaxing or eliminating these protections, as requested by Verizon and others, will result in the taking of what has been created by many independent and innovative minds and surrendering it to dull and self-interested entities that have long established their disregard for the public and fair competition.

The Commission cannot now turn its back on the long history of success, progress and pro-competitive results of the *Computer Inquiry* line of decisions.

C. The Internet Thrives Because Existing Regulations Require Openness of the ILEC's Networks.

Verizon submits that continued regulation pursuant to Title II and *Computer Inquiry* rules will inhibit broadband innovation and deployment to the detriment of consumers. These

arguments are misguided and disavowed by experience. The 35-year history of the "information" and "enhanced" services industries proves time and again that innovation and deployment of advanced technologies actually depends on a continuation of the Commission's practice of applying regulation targeted to service layers that are not competitive (the lower, access transmission services) and not applying, or lightly applying, regulations to layers where competition exists (the higher, application and content layers).[6]

Before the *Computer Inquiry* rules, RBOCs were able to control many ISP functions by bundling their own ISP services with their telephone network infrastructure. The *Computer Inquiries* changed this by mandating that the infrastructure companies offer a selection of information service providers to their customers. The RBOCs were later forbidden to use their infrastructure positions to give affiliated ISPs an advantage over competing CS-ISPs. This openly competitive environment spurred to market numerous CS-ISPs, who, in turn, stimulated the development of the World Wide Web and commercial Internet.

It is small business that drives innovation in the American economy, not large monolithic businesses that wish to dominate the marketplace to profit from a "one-size-fits-all" approach to providing services. The Internet was brought to the public by small, independent CS-ISPs. The telephone companies not only did not support this paradigm shifting development; they fought it. Only after the Internet was firmly ensconced in American life did Verizon and its large ILEC brethren begin to see it as a business opportunity. In short, the ILEC-based ISPs have never been innovators.[7] What would make the Commission turn a blind eye to this irrefutable fact or cause

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[6] Robert Cannon, Senior Counsel, Office of Plans and Policy, Federal Communications Commission, *Where Internet Service Providers and Telephone Companies Compete: A Guide to the Computer Inquiries, Enhanced Service Providers and Information Service Providers*, Version 0.0, http://www.tprc.org/abstracts00/ISPcompetepap.doc

[7] ADSL itself had been essentially abandoned by the ILECs after failed video-on-demand trials in the early 1990s. The independent ISPs were responsible for using ADSL for data. It was the independent ISPs that developed a free-

the Commission to retreat from a regulatory system that is a demonstrable success? Certainly, Verizon's Petition cannot.

The Internet thrives and broadband technology is deployed because the underlying transmission networks and standards are and have been open to competitive pressures that stimulate network providers, like Verizon, to innovate. This "openness" is a result of Title II and *Computer Inquiry* regulations. The *Computer Inquiry* regime created the right conditions for a robustly flourishing competitive market for enhanced services, one which eventually evolved to include competitive ISPs and the CS-ISPs of today. These rules are necessary for the continued proliferation of CS-ISPs. An unregulated duopoly environment (Telco/CableCo), on the other hand, necessarily limits Verizon's incentive to aggressively compete and innovate. A pro-competitive regime, safeguarded by Title II and *Computer Inquiry* rules, ensures small CS-ISPs access to the ILEC's lines and provides the better means for entrepreneurial innovation. Forbearance would provide Verizon the opportunity to "close" its network to unaffiliated CS-ISPs and discriminate among and between the great diversity of services offered by the multitude of independent ISPs and CS-ISPs. This result is contrary to the open architecture of the Internet.

Verizon's Petition attempts to undermine over three decades of pro-competition policy and literally put the CS-ISP/independent ISP industry out of business once and for all. While the removal of Title II and *Computer Inquiry* obligations would, indeed, slightly reduce a monopoly's cost of doing business, it would be no more appropriate than permitting the ILECs to

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market system of intercarrier compensation based on peering and upstreaming. ISPs developed consumer-friendly web page creation services. ISPs are learning how to develop and deal with Voice over IP, a future service that does not pose a competitive threat to them as it does to the ILECs. ISPs, especially the smaller local ones, have been continuously innovating in their networks; the Bell affiliates are more than content to offer "me too" services leveraged to their monopoly loop services.

ban "foreign attachments" to their telephone lines, as they argued against in the *Carterfone* decision which presaged *Computer Inquiry*.

Verizon's Petition makes much of the competitive entry envisioned by the 1996 Act, but the 1996 Act, itself, has failed. Its intent was sound, but its implementation was made impossible by the very entities that now seek further eradication of its pro-competitive and public protection provisions. A balance must be struck. A few legacy carriers cannot continue to benefit from valuable government grants and licenses, including the use of public rights-of-way, and be allowed to extend those rights in a way that bars others from offering their service to the public. In the future, broadband services will be as, or more, important than Plain Old Telephone Service ("POTS"). Limiting the common carriage obligations of reasonableness and non-discrimination to declining services such as POTS does violence to the entire principle that the Commission is charged with assuring. That is, "to make available, so far as possible, to all the people of the United States, without discrimination… communication service with adequate facilities at reasonable charges…" as Congress so wisely provided 70 years ago. 47 U.S.C. § 151.

III. FORBEARANCE PRESENTS A CLEAR AND PRESENT DANGER TO INNOVATION, CONSUMER CHOICE, AND TAILORED SERVICES

Forbearance presents a clear and present danger that DSL-based ISP service will be offered by the long entrenched local exchange monopolists and the public's current right and capability to choose ISPs based their unique needs and the CS-ISP's differentiated services will be sacrificed. Entities that have not been born, bred and matured as a monopoly, of necessity, have had to innovate and create service distinctions that appeal to various niche markets – first, in order to establish a market and, then, to sustain their presence in that market. The CS-ISP's business plan seeks not to be the choice for every potential user, but to be an attractive choice to

users that may most benefit from its unique services. Forbearance will quickly convert a market of diverse choices into an anachronistic throw back to the days of homogenized, non-differentiated, totalitarian–like services, such as those available in countries that do not value and support free enterprise and free speech, that do not tear down entry barriers, but erect them, that do not allow choice but require purchase of services from a state-controlled entity. Although for different reasons and in different ways, the same smothering atmosphere will be created – not with control directly in government hands, but in the hands of private interests created over decades of sanctioned monopoly and perpetuated by government decision. What will be sacrificed is differentiation and choice created and offered by CS-ISPs.

- **Service Differentiation - Content Filtering**

One area of service differentiation involves content filtering. Today, this usually consists of two very different types of service. One, often thought of as "family-friendly" filtering, intentionally blocks access to services believed to be unsuitable to some classes of viewer. Courts have ruled that this cannot be mandated of an ISP, but there are CS-ISPs, especially focused in certain geographic regions, that choose to offer this because of their constituencies.

Another type of filtering is anti-spam defense. Here, there are several approaches at work. It is not always easy for a machine to tell spam from valid email. Some CS-ISPs leave all filtering to the end user. Others block mail that fails some kind of protocol or other test. For example, there is currently a debate in the protocol community around Sender Policy Framework (SPF) and competing methods of distinguishing forged email. Some CS-ISPs choose block lists from among the many blacklist services now available. These services are not 100% reliable, so CS-ISPs have to choose which ones they find most useful, and implement blocking policies. Some CS-ISPs use rule-based filters such as SpamAssassin. Some use Bayesian filtering of the

content. Some use human-mediated spam block services, such as Brightmail, which have rapidly-updated active spam filters that block specific spam messages before they are widespread. And for each of these anti-spam techniques, the CS-ISP chooses whether to block the mail entirely, move it to a special mailbox that the user can choose to query to search for the occasional false positive, or merely label the message as questionable so that the user can filter it. An ISP monopoly unconstrained by Title II and *Computer Inquiry* rules can destroy these variations and the public will be the loser.

- **Service Differentiation - Symmetry vs. Asymmetry of Bandwidth**

Consumer DSL services are almost always provisioned using *Asymmetric* DSL technology. This usually works well because consumer demand tends to be much greater in the download than upload direction. Business subscriber requirements tend to be far more symmetrical. Existing DSL tariffs generally permit the CS-ISP to choose between different speed packages, allowing for a variety of upstream and downstream bandwidth offerings.

RBOC-affiliated ISPs tend to be most parsimonious in the upstream direction. BellSouth, for instance, claims in its forbearance Petition (which Verizon endorses) that its own market share of true broadband service (defined by exceeding 200 kbps in *both* directions) is particularly small because its basic consumer ADSL service has only 128 kbps upstream capacity. This does not mean that the RBOC's market power is weak. Rather, it proves the opposite, that its market power is great enough that it can provide an inferior upstream service *by its own choice*. Likewise, Verizon provides only 128 kbps in the upstream direction on its primary consumer-level services.

ADSL technology is capable of being less asymmetric. Some CS-ISPs use ILEC ADSL services with the upstream and downstream bandwidth both set to 640 kbps. This is near the

maximum upstream and minimum downstream rate, but it provides a business-class symmetric service using inexpensive ADSL equipment. The cost of this to the underlying ILEC is essentially the same as for a more asymmetric service; the choice is made at the ISP layer, not the telecommunications service layer.[8] This choice would be lost under Verizon's requested forbearance.

- **Service Differentiation - Vertical Services**

Retail ISPs/CS-ISPs provide a number of "vertical" services in addition to raw Internet access. These are also differentiators. America Online, for instance, sells a "bring your own" service that provides no access, merely permission to use its vertical services. But most subscribers pick a CS-ISP that provides a bundle of access and vertical services. The most familiar vertical service is probably email. This has many differentiators other than the aforementioned spam filtering. Email, in turn, has two functions: relaying (used for sending) and servers. The relaying function of most CS-ISPs is straightforward, allowing users of their networks to send email anywhere via their server. There are, however, subtle differences. The Internet's mail protocol, SMTP, uses port 25. As an anti-spam measure, some CS-ISPs block port 25 sent from the user to anyone but the ISP server. This prevents virus-hijacked machines from becoming bulk senders. But it also prevents users from sending mail directly, as some choose to do. A few CS-ISPs permit port 25 SMTP sending but cap the volume, which allows typical users' email to flow, but blocks the torrent caused by a virus.

Verizon Online, however, instituted a policy by which its users are required to put Verizon's domain name in the header of their message, instead of the name of their chosen email

[8] The maximum downstream rate for ADSL is 8 meg, the maximum upstream for ADSL is 1 meg. Some ISPs use a combination of asymmetric upstream and downstream to offer a more symmetric offering, suitable for business. For example, an ILEC's 768Kbps x 512Kbps ADSL offering can be used to create a 512x512Kbps symmetric service offering.

address (which, of course, could be a private domain or a different service). This *mandatory advertising* policy is incompatible with many users' preferred mode of operation, but is nonetheless imposed on Verizon's DSL subscribers.

Email receiving options are also varied. Retail ISPs provide an email server that stores incoming emails until fetched. These do not all behave the same. They have different storage capacity quotas, blocking emails once the quota is full. Most support POP3, a simple protocol that allows retrieval of email by a client. A few ISPs support IMAP4, a more elaborate protocol that allows manipulation of the email on the server, and allows email to remain on the server while being filed by a mailbox or selectively retrieved. Some ISP POP3 servers support an option that allows email to be selectively retrieved by multiple clients (say, a user's desktop and laptop computers) while retaining knowledge that it has or has not been already retrieved once. Some encrypt passwords in transit; some do not. Many, but not all, offer web-based access as well. Many offer more than one mailbox per account, especially suitable for families; some only offer one.

CS-ISPs also offer additional services such as personal web pages. Web services vary in terms of storage capacity, usage quota, page creation support and available features (Common Gateway Interface or Active Server Page support, PHP programming, etc.). Some broadband CS-ISPs also offer dial-up support for travel, with or without a quota of "free" hours. Some provide help with virus removal; others bundle it in software. Some support only Microsoft Windows users; some provide support for Apple Macintosh and Linux users.

What becomes of this clearly beneficial diversity if the Commission grants Verizon's Petition? Homogeneity in information services and technology benefits no one but the dominant provider of both content and transmission. The Commission must not grant Verizon the

opportunity to squelch the diversity in options driven by CS-ISPs – but that is exactly what Verizon is asking the Commission for authority to do.

- **Service Differentiation - Servers and Tunnels**

CS-ISPs often prohibit residential retail customers from having "servers" on their lines. This is widely done to prevent subscriber web servers from overloading the upstream direction; cable modem networks are especially limited in the upstream direction. But just how this is interpreted does vary from ISP to ISP. Some have policies against using secure tunneling protocols, such as IPsec. Some allow private email servers, some do not. Again, this is the type of issue that is best handled in a vibrant, competitive market with many players. These issues do not impact the underlying telecommunications layer, only the higher layers serviced by CS-ISPs.

The "layered" approach to regulatory policies, as favored by the vast majority of non-ILEC commenters in the WC Docket No. 02-33 rulemaking proceeding is fully compatible with this approach. Forbearance is not.

The preceding Sections demonstrate that the current regulatory system has worked, continues to work, and has resulted in immeasurable benefits and abundant choice to the American consumer. Verizon's Petition creates a clear and present danger to these achievements and threatens continued diversity, tailoring of services, and customer choice made possible by CS-ISPs. For these reasons, the Petition must be denied.

IV. TECHNOLOGICAL, GEOGRAPHICAL, AND COST-EFFECTIVE EQUIVALENTS TO ILEC DSL DO NOT EXIST; SMALL CS-ISPs WILL BE HARMED WITHOUT ASSURED ACCESS TO ILEC DSL AT JUST, REASONABLE AND NON-DISCRIMINATORY RATES, TERMS AND CONDITIONS

Verizon's Petition relies on the proposition that the marketplace for broadband access is widespread and vibrant, thus making Title II and *Computer Inquiry* rules unnecessary to satisfy

the public's interest. But Verizon's Petition is thin on facts, data, and evidence necessary to support its *ipse dixit* argument.

There is good reason for Verizon's omissions – they do not exist. As will be shown, granting Verizon's Petition is premature because, if there is a competitive broadband access market, it is nascent, narrow, technologically inferior, and not available to most small, CS-ISPs. And whatever competition does exist is insufficient to discipline Verizon and other ILECs from engaging in anticompetitive pricing and marketplace tactics for the foreseeable future.

A. Wireless Options Are Limited

A few CS-ISPs have succeeded in going wireless. This is not, however, a general panacea. To date, wireless ISP access impacts only a very small market share. There are many reasons for this. Licensed spectrum is very costly in most areas, if available at all. In addition, there is little evidence of licensed spectrum owners offering CS-ISPs a wholesale access service that is the technological equivalent and therefore substitute for ILEC DSL. Instead, they are more likely to provide a retail ISP service over their own spectrum in order to compete with less-well-capitalized ISPs who cannot afford the spectrum. If there is a market for wireless broadband, it has not been proven to be sufficiently competitive to justify and support widespread wholesale access.

Unlicensed spectrum is limited both in availability and power. Because of the low power limit, range is necessarily limited. The best results are found in rural areas that are flat (to avoid being blocked by hills), dry (to avoid rain and fog attenuation) and treeless (to avoid signal absorption. Thus, wireless ISPs are most heavily concentrated in the area between the Rocky Mountains and the Mississippi River, from Texas to Kansas. A few opportunistically operate in

coastal regions and in flat areas such as Florida. But most CS-ISPs lack the combination of clear paths and subscriber density needed to make unlicensed wireless access profitable.

In urban areas, interference is also a problem. The unlicensed bands are occupied by cordless phones, microwave ovens, video extenders, home wireless local area networks, public access points, Bluetooth devices, and other sources of interference. The Commission should certainly continue to support wireless operation, and pending dockets may be of some assistance, but wireless access can never fully substitute for wireline access. It certainly cannot be used to support Verizon's forbearance request.

B. The CLEC "Alternative" is Not Sufficiently Available and is Likely to Become Less So in the Future

In its nearly identical petition, supported in its entirety by Verizon, BellSouth argues that CS-ISPs will have alternative avenues of accessing their customers in a world in which ILECs are not subject to Title II and *Computer Inquiry* rules. Had forbearance been granted some years ago, prior to the dot-com collapse, a time in which there were several hundred, well-funded CLECs in existence, and had these CLECs avoided the pitfalls of overbuilding and opportunistic blue sky forecasting, in short, at a time when there was in fact a viable presence of a multitude of CLECs, BellSouth might have argued with some credibility that the impact of forbearance on CS-ISPs would be minimal. But the rules have turned on the viability of CLECs and their environment today is far more hostile than in 2000 or before. Verizon, to its credit, does not waste much space in its petition describing imaginary alternatives that ISPs can fall back on. It simply writes them off in a flagrant show of force.

Line sharing has been removed by the *Triennial Review Order* ("TRO"), denying CLECs any semblance of a level playing field on which to compete with RBOC DSL operations. The TRO did permit the UNE Platform to take the place of RBOC voice service, but that too is

nearing its sunset, thanks to the *USTA II* decision and the Commission's December 15, 2004 *Remand Order*. The Commission's Fiber-to-the-Home ("FTTH") rule allows the ILEC to cut off CLEC DSL access to subscribers whose home is overbuilt with FTTH, and allows green field FTTH sites to have no competition at the CLEC level at all, unless of course a CLEC digs up the same streets itself – hardly a likely occurrence, nor a particularly smart one if you ask the city, town or locality whose streets must be constantly disrupted to accommodate competition in the last mile. Verizon is now installing FTTH in pilot markets, and without *Computer II* and common carriage protection or CLEC access to the subscribers, residents of impacted homes will lose *all* access to CS-ISPs, except, perhaps, for a cable ISP or, if Verizon deigns to do so, a very limited choice of large ISPs that have entered into temporary commercial revenue-sharing agreements with it. Smaller, local CS-ISPs will be gone; customers will lose the vast majority of their options. This is clearly not in the public interest.

Verizon has then extended this via the Commission's grant of its Fiber-to-the-Curb ("FTTC") petition. Now Verizon and her sister RBOCs need merely deploy a Digital Loop Carrier system in the general vicinity of a subscriber and it need no longer provide loops to CLECs. Should Verizon decide that its FTTH scheme is too costly, it too could fall back on FTTC. We are also concerned that the Commission might continue to "boil the frog" and deny even raw UNE Loop access to an increasing number of subscribers by extending the exemption from its current 500-foot level to something even more expansive. There is little doubt that the RBOCs will take advantage of this to further reduce the number of retail subscribers who can be

served by CLECs.[9] Thus, the CS-ISPs will have lost their most promising and yet unrealized alternative means of broadband access supply.

C. Cable And Other Technologies Are Not Substitutes

Verizon cites instances of cable television companies offering private carriage to unaffiliated ISPs. Cable companies offering cable modem service are not required to be reasonable and nondiscriminatory in their dealings with CS-ISPs. It must also be noted that cable companies *rarely* offer private carriage. Some cable networks now offer a second choice of ISP, besides their own, but no major Multiple System Operators currently offer an open access policy, *i.e.*, making access available to any requesting CS-ISP.

Verizon seizes on the status of cable systems and cites in its Petition the fact that cable companies, their broadband "competitors," are not subject to *Computer II* and common carriage obligations. Verizon complains that this is not "fair" or a "level playing field". This is a fallacious argument.

The cable and telephone industries are very different, with a different history, different capital structure, different network architectures, and, for better or for worse, subject to different laws. While many CS-ISPs would no doubt like "equal access" to cable modem networks, it is even more important that they retain the access that they now have to the ILEC networks.

The ILEC position is reminiscent of a comedy routine[10] in which a faith healer was visited on stage by a man who had one deformed hand. The healer repeatedly inveighed, "Lord,

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[9] If forbearance is granted, WBIA posits that FTTx will not only *not* bring more competition to the homes passed, but will result in a dramatic drop in competition because it will not be subject to common carriage and will not be available to ISPs via tariffed access services. Even dial-up may be profoundly impacted because new FTTx systems need not implement the high-quality TDM-based telephone service, such as is offered by Integrated DLC, that modems need in order to get maximum performance.

[10] Jack Burns and Avery Schreiber, *The Faith Healer – The Immobile Thumb*, from the album *The New Emerging Bigot.*

will you *please* make this one hand like the other!" Then the subject looked at his hands, and the faith healer looked at them and cried out, "Wrong hand!"

Telephone companies should not be turned into cable companies. Verizon certainly likes to cite the alleged similarities of the two networks. When CS-ISPs began asking for cable modems to be opened up, some may have cited the obligations that had always applied to telephone companies. But the cable companies did not build their networks based on the guaranteed profits of a regulated monopoly that has existed and been filling the coffers of the ILECs for nearly a century and a half. Cable companies' profits have not benefited from rate-of-return regulation. Cable companies have never been totally free from competitive alternatives such as over the air broadcasting and multichannel satellite services. For the first decades of the cable industry's existence, its market penetration never exceeded 40-50% versus the typical 96% penetration of the phone industry. Given the success of cable today, it is fair to question whether cable should be immune from open access requirements. Ironically, decades ago, when the Commission first considered requiring public and third party access to cable, the Commission mandated such action. The questions surrounding the proper role of cable for the future is not a reasoned basis to allow the ILECs to foreclose the markets in which they are dominant to competitive and diversity of providers.[11]

Cable modem networks were developed by companies whose primary business was entertainment. They saw the Internet taking away eyeballs from television and saw themselves as able to provide a competitive Internet service. Assuming that the Commission's position in the pending *Brand X* case prevails at the Supreme Court, cable modem services can be easily described as self-provisioned ISPs. That is 180 degrees different from the model that the

[11] Likewise, satellite is *not* an equivalent competitor for Internet access – not only is upstream bandwidth far more costly, but satellite transit latencies are harmful to interactive Internet activity.

telecommunications industry has long used, in which they provisioned the bandwidth for any type of user. Closing off ILEC DSL networks because they do something that self-provisioned ISPs can do is an abrogation of their responsibility to the public.

Another reason that cable modems do not offer common carriage to any CS-ISP is because their networks are not designed for it. The standard for cable modems, DOCSIS (Data Over Cable Service Interface Specification), was created for CableLabs during the 1990s at a time when there was no pressure to create a common carrier-like service. Instead, the model was more like that of a Local Area Network. DOCSIS makes use of an arbitration procedure for its limited upstream bandwidth, and while it has a reserved-bandwidth mechanism primarily of interest to cable telephony, it lacks the flexibility in data-bandwidth allocation found in ATM-based DSL networks. This does not mean that DOCSIS cannot be used for an IASP service that supports multiple IVSPs. It can; some cable companies do offer access to alternative ISPs. But the specific means of doing so are not well established or standardized, and the cable companies doing so typically only invite a small number of alternative ISPs onto their cable. This stands in marked contrast to DSL, which was designed from the ground up for common carriage, and whose ATM layer permits an essentially unlimited number of ISPs to share a DSLAM with minimal interaction.

Grant of Verizon's Petition is premature and wrong because the very filing of the Petition is premature. But this should not come as a surprise. Verizon's Petition is but the latest example of an agenda that began in 1987 with the first Triennial Review of the Modified Final

Judgment,[12] an agenda whose goal is anti-competitive, anti-small business, anti-consumer and, now, anti-independent broadband provider.

V. THE LAYERED MODEL FOR NETWORK ACCESS AND USAGE

WBIA urges the Commission to maintain and extend the "layered" model for network access and usage. Verizon's Petition, quite clearly, seeks vertical integration, which is good for Verizon, but is not in the public's interest.

The distinction between "information service" and "common carriage," which Verizon's Petition wants to blur, is largely one of content vs. carriage. That is, the information service provider uses the network for transport and obtains that facility under terms that are either public (tariffed) or private (contracted). In the data communications world, this distinction may be expressed within the OSI Reference Model. Here, it should be noted however, that the OSIRM is *not* being posited as the *sole* example of a layered model. It is largely of academic importance. But its terminology is widely used and understood. The OSI protocol stack itself has largely been abandoned, but the now-fashionable TCP/IP protocol stack also has layering.

The principles of common carriage operate at the lower layers, while "internetworking" occurs at higher layers. ISO 8648 indicates that the likely break between these two is in the middle of layer 3; the "internetworking role" is defined as operating above common carriage

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[12] In 1987, a scant three years after AT&T's Divestiture of the Baby Bells, *see United States v. American Tel. & Tel. Co.*, 552 F. Supp. 131, 224 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983), the U.S. Department of Justice issued its first triennial review of the state of competition post-divestiture. *See* Peter W. Huber, The Geodesic Network, *1987 Report on Competition in the Telephone Industry*, United States Department of Justice, 1987. Incredibly, Huber's Report concluded that all telecommunications markets affected by the monopoly control of the Baby Bells were sufficiently competitive to warrant lifting MFJ restrictions and all the Bells to compete where they willed. This was 1987 when the average long distance call still cost around $0.25/minute and the commercial Internet was a decade away from its boom! Common sense, wisdom and trust in competitive markets over monopoly-driven agendas ultimately prevailed, ensuring that Huber's Report would not have its author's desired effect. The Baby Bells continue to press for re-monopolization of telecommunications markets to this day. WBIA implores the current Commission to exercise sound judgment and the foresight of its predecessors as it considers Verizon's most recent push down this path of competitive destruction.

(which may occupy the "subnetwork role" and below). The lower layers are either private (as in a LAN) or common carriage (as in the use of the public networks by multitudinous users).

A typical application of that principle to the TCP/IP protocol stack would put the IP layer clearly in the "enhanced," or private, non-common-carriage area. And this requires the lower layer of the network to support it. While pure raw TDM bit pipes, such as leased lines and dialup modems, are one example of a Layer 1 service provided by a common carrier, it is also possible to converge it atop a packet-oriented common carrier service such as ATM or Frame Relay. These are used for DSL support and their provisioning in this way is the appropriate role of a common carrier.

There is thus a clear break in the protocol stack between the role played by carriers and the role of the (unregulated) information service. A common carrier does not become an information service provider merely because it carries the traffic of one, even if the information service provider is part of the same corporate umbrella. Verizon seems to set the clock back even farther and proposes a "beads on a string" approach, in which layers are ignored and a device and wire are one or the other. Only by such an approach, based on distorted technology, can a raw DSL (ATM or Frame) circuit be viewed as an information service. The fact is that the information service is the payload. It is also an obsolete approach because it ignores all current data networking theory and practice. A broadband physical link may carry anything in its payload, but it remains transparent to its payload, and distinct, in layering, from its payload.

To render a sound decision driven by real world facts and not current political prejudice, the Commission must rely on the layered analysis, an analysis that recognizes that the lower layers are separate from their payload. Absent such reliance and recognition, CS-ISPs will find themselves shut out of the market entirely, or imprisoned in the role of competitive toadies to the

dominant carriers and subject to the kinds of undue discrimination that early interconnect companies faced in the years after *Carterfone*.

These considerations make plain that the public interest demands the retention of the principles of reasonableness and non-discrimination that retention of common carrier status for ILEC-provided DSL will provide. By placing the use of both the ILEC-affiliated ISP and independent ISPs in the higher layer of network strata, the two very different roles being played will be recognized and diversity and competition preserved. Verizon, quite clearly, seeks the opposite outcome, but its desired outcome is bad for consumers, bad for the economy, and contrary to the pro-competitive goals emboldened in the 1996 Act.

VI. THE COMMISSION MUST NOT HANG THE FUTURE OF THE INTERNET AND THE INFRASTRUCTURES NEEDED TO SUPPORT IT ON ILEC CLAIMS THAT THE FUTURE IS SAFE IN THE HANDS OF THE "INTERNET PROTOCOL" – "IP" IS NO PANACEA.

To justify forbearance, Verizon and its ILEC ilk attempt to create a smoke screen that the future of competitive telecommunications and broadband is in safe hands because of the "Internet Protocol" ("IP"). IP is very popular today – we hear about it in the news, we hear about it in investment reports of Wall Street investment firms, and we hear the ILECs champion IP as the new universal infrastructure transmission service layer and all that is needed to support all future applications. As such, IP is being posited for applications as diverse as radio and television program distribution, fixed and wireline telephony, storage networks, household appliance control, and even data communications. But this trend is by no means necessarily going to continue.

Many trends have whetted the fancy of venture capitalists and the public only to fall to the "Next Big Thing." Whether IP is *technically* the correct medium for all these future applications is uncertain, for uncertainty is the nature of technological development. Therefore,

the Commission must be careful in this and related proceedings that it not take actions which favor the IP-medium over the unknown mediums of the future. WBIA is concerned, and rightfully so, that drastic and unwarranted changes to the regulatory system will choke off the very system which stimulated innovation and made possible the development of the Internet Protocol and the Internet revolution of the latter 20th Century that followed. It is critically important to the development of "The Next Next Big Thing" for CS-ISPs, whose core business is providing access to information and the ability for customers to generate new value at the network's edge, to continue to have this right of access without the network provider's active involvement in the processes.

VII. CS-ISPs ARE SMALL BUSINESSES - THE IMPACT OF FORBEARANCE AND THE REGULATORY FLEXIBILITY ACT

It must be stressed that it is small business that drives innovation in the American economy, not large monolithic businesses that wish to dominate the marketplace so as to be able to profit from a "one-size fits all" approach to service. The Internet was brought to the public by small, independent and entrepreneurial CS-ISPs. The telephone companies not only did not support it; they fought it. Only after the Internet was firmly ensconced in American life did the large ILECs, including Verizon, begin to see the Internet and the information society as a business opportunity. The Commission must protect CS-ISPs, which are small businesses. It must protect the innovation they stimulate. Indeed, this is Congress' mandate in the Regulatory Flexibility Act ("RFA"). 5 U.S.C. § 601.

VIII. CONCLUSION

In conclusion, the Washington Bureau for ISP Advocacy requests that the Commission dismiss Verizon's Petition for Forbearance, retain the Title II common carriage obligations and the associated *Computer II* requirements that support and enhance common carriage for ILEC DSL services. Any other choice would cause grievous harm to many CS-ISPs around the country, especially small businesses. More importantly, granting Verizon's Petition would harm the public by taking away critical choice in the short term and eliminating innovative forces that will have a crippling effect on the long-term health of the U.S. economy.

RESPECTFULLY SUBMITTED

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